



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN 16 2003

OFFICE OF
CIVIL RIGHTS

CERTIFIED MAIL # 7000-1670-0002-9179-7282
RETURN RECEIPT REQUESTED

In Reply Refer to:
EPA OCR File No. 1R-02-R6

Elaine Cimino
Director
La Cienega Valley Citizens for Environmental Safeguards
49 Camino Torcido Loop
Santa Fe, New Mexico 87507

Re: REJECTION OF ADMINISTRATIVE COMPLAINT

Dear Ms. Cimino:

On February 12, 2002, you filed a complaint with the U.S. Environmental Protection Agency (EPA) Office of Civil Rights (OCR) on behalf of the La Cienega Valley Citizens for Environmental Safeguards (Complainant). The complaint alleges violations of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.* (Title VI), and EPA's regulations implementing Title VI at 40 C.F.R. Part 7 by the New Mexico Environmental Department (NMED), Santa Fe County, and the City of Santa Fe (Recipients). The purpose of this letter is to inform you that OCR has rejected your complaint for investigation.

Under Title VI, a recipient of federal financial assistance may not discriminate on the basis of race, color, or national origin. Title VI does not apply to actions of the federal government or federal agencies. Pursuant to EPA's Title VI implementing regulations, OCR conducts a preliminary review of Title VI complaints for acceptance, rejection, or referral. 40 C.F.R. § 7.120(d)(1). A complaint must meet the jurisdictional requirements described in EPA's Title VI regulations for investigations. First, it must be in writing. Second, it must describe an alleged discriminatory act that violates EPA's Title VI regulations (*i.e.*, an alleged discriminatory act based on race, color, or national origin). Third, it must be filed within 180 days of the alleged discriminatory act. 40 C.F.R. § 7.120. OCR considers a complaint filed on the date it is received by EPA or by another Federal agency. Fourth, because EPA's Title VI regulations only apply to applicants or recipients of EPA assistance, the complaint must identify an applicant or recipient of EPA assistance that committed the alleged discriminatory act. 40 C.F.R. § 7.15.

In accordance with the requirements described above, OCR conducted a preliminary investigation of the allegations submitted in your complaint to determine whether the jurisdictional requirements were met. The preliminary investigation consisted of a site visit to Santa Fe, New

Development Review Committee, which is not a recipient of EPA assistance. Therefore, its actions are not within the jurisdiction of Title VI or EPA regulations implementing Title VI.

Allegation # 4 - On April 15, 2002, the Federal Highway Administration (FHWA) allegedly ignored concerns raised by the Complainant about stormwater runoff to downstream residents on the Cerrillos Road reconstruction project. Disparaging remarks about community members were alleged to have been made by a FHWA official.

Rejected - EPA's Title VI regulations only apply to applicants or recipients of EPA assistance. This allegation involves the Federal Highway Administration, which is a federal agency and not a recipient of EPA assistance. Therefore, its actions are not within the jurisdiction of Title VI or EPA regulations implementing Title VI.

Allegation # 5 - The United States Army National Guard has allegedly ignored the Complainant's request for information under the Freedom of Information Act request, and denied the Complainant an opportunity to provide public comment on an Environmental Assessment or Finding of No Significant Impact.

Rejected - EPA's Title VI regulations only apply to applicants or recipients of EPA assistance. This allegation involves the Army National Guard, which is a program operated by the federal government and not a recipient of EPA assistance. Therefore, its actions are not within the jurisdiction of Title VI or EPA regulations implementing Title VI.

Allegation # 6 - On August 14, 2001, the community was alleged to only be allotted three minutes to make presentations at a public hearing, while developers and others were given up to two hours.

Rejected - This allegation is untimely. A complaint must be filed within 180 days of the alleged discriminatory act. This described act occurred on August 14, 2001, which was more than 180 days prior to February 12, 2002, the date on which you filed the complaint. Therefore, this allegation is untimely.

Allegation # 7 - In November of 2001, the Los Alamos National Laboratory allegedly withheld information from the City of Sante Fe concerning contaminants in ground water that could potentially harm Native American and Hispanic communities in the area.

Rejected - EPA's Title VI regulations only apply to applicants or recipients of EPA assistance. This allegation involves the Los Alamos National Laboratory, which is a program operated by the federal government and not a recipient of EPA assistance. Therefore, its actions are not within the jurisdiction of Title VI or EPA regulations implementing Title VI.

Peter Dwyer
Santa Fe City Attorney
200 Lincoln Avenue
P.O. Box 909
Santa Fe, NM 87504-0909

Steven Koppleman
Santa Fe County Attorney
102 Grant Avenue
P.O. Box 276
Santa Fe, NM 87504-0276

Stephen G. Pressman, Acting Associate General Counsel
Civil Rights Law Office
EPA Office of General Counsel

Barry E. Hill, Director
Office of Environmental Justice (MC 2201A)

Gregg A. Cooke, Jr., Regional Administrator
EPA Region 6

Sherry Brown-Wilson, Title VI Contact
EPA Region 6